IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11612 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M K PANCHIWALA ASSISTANT (TYIST)

Versus

SUPERITENDING ENGINEER (O & M)

Appearance:

MR PK JANI for Petitioner

MR SP HASURKAR for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/07/2004

ORAL JUDGEMENT

1.0 By this petition the petitioner has prayed for a direction to quash and set aside the order of termination dated 30th July 2003 passed by the Superintending Engineer (O&M), GEB, Palanpur.

2.0 The petitioner had been working as Junior

Assistant (Typist) with Gujarat Electricity Board at Deesa. One Devchandbhai Kantilal Modi filed a private complaint in the Court of learned Judicial Magistrate, First Class, Deesa against the petitioner and his brother Rajendrakumar Panchiwala. In the complaint it was alleged that the applicant and his brother had gone to the place of the complainant on 10th June 1998 and had advised him to invest in the shares of State Bank of India and a cash amount of Rs.20000/- was paid. It is alleged that thereafter the complainant paid the remaining amount to the accused but the shares were not given to him. Therefore the complainant filed complaint alleging offences punishable under sections 406, 420 and 114 of IPC.

2.1 The learned Judicial Magistrate (First Class), by his judgement and order dated 15th/17th February 2003 convicted the petitioner and his brother for the offences punishable under sections 420 and 114 of IPC and ordered the petitioner and his brother to undergo rigorous imprisonment for three years and to pay a fine of Rs.2000/-, and in default to undergo further rigorous imprisonment for 9 months. The learned Magistrate ordered that a copy of the judgement be sent to Gujarat Electricity Board, Deesa and to the Superintending Engineer at Palanpur.

2.2 Feeling aggrieved by the judgement and order passed by the learned Judicial Magistrate (First Class), Deesa, the petitioner preferred Criminal Appeal No.9/2003 int he Court of learned Additional Sessions Judge, Deesa. The petitioner was never arrested nor put under custody at any point of time. Later on a pursis application Exh.9 was submitted before the Sessions Court praying that since the offences are compoundable, the accused be permitted to compound the said offence and the accused be acquitted after accepting the compromise. Therefore the matter was kept for hearing on 23rd July 2003.

2.3 In the meanwhile, the Superintending Engineer, Gujarat Electricity Board, on 21st July 2003, issued a show-cause notice to the petitioner to show-cause, within seven days, as to why his services should not be terminated on the basis of the conviction order passed by the learned Magistrate. It is also required to be noted that on that very day the respondent had filed Caveat applications in this Court as well as Civil Courts at Palanpur and Deesa. The petitioner submitted his reply on 28th July 2003 stating that against the judgement and order of conviction and sentence passed by the learned Judicial Magistrate (First Class) Deesa, the petitioner

has preferred Criminal Appeal No.9/2003 before the learned Additional Sessions Judge, Deesa and that an application is already submitted to compound the offence as the said offence is compoundable. The petitioner, therefore, submitted to the Superintending Engineer that in view of the aforesaid development there is every likelihood that the the order of conviction will be set aside and therefore the show-cause notice be not further processed and no further action may be taken.

2.4 The superintending Engineer, on 30th July 2003, on the basis of the conviction recorded by the learned Judicial Magistrate (First Class), Deesa, terminated the services of the petitioner with immediate effect. On 31st July 2003 the Criminal Appeal No.9/2003 filed by the petitioner came to be allowed and the judgement and order of conviction passed by the learned Judicial Magistrate (First Class) in Criminal Case No.1440/1995 came to be set aside by the learned Sessions Judge.

3.0 It is under the aforesaid circumstances the petitioner has approached this Court by way of the present petition.

4.0 Learned counsel for the petitioner raised the following contentions:

[a] The Superintending Engineer, GEB, has passed the impugned order in great haste with a view to see that the petitioner is terminated from the service.

[b] In response to the show-cause notice dated 21.7.2003 the petitioner had pointed out that there is every likelihood that the order of conviction will be set aside and therefore the show-cause notice may not be processed further. The petitioner had also produced all the relevant documents including the pursis filed before the Sessions Court. The Superintending Engineer was aware that the District Court was likely to pass the order on 31st July 2003. In spite of that on 30.7.2004 the Superintending Engineer has passed the impugned order on 30th july 2003, resulting into the present litigation.

[c] The learned Additional Sessions Judge, Banaskanta has set aside the order of conviction and sentence passed by the learned Judicial Magistrate (First Class), Deesa and therefore, there is no conviction against the petitioner in

existence. Therefore, the petitioner deserves to be reinstated in service.

[d] The manner in which the respondent has passed the order shows great haste and grudge against the petitioner. The show-cause notice was issued on 21.7.2003 and on the very same day caveat applications were filed in this Court and Civil Courts at Palanpur and Deesa. Even though the petitioner pointed out the fact that the conviction order is likely to be set aside, the impugned order was passed on 30.7.2003 itself.

Learned counsel for the petitioner, therefore, submitted that this is a fit case where the impugned order of termination requires to be quashed.

5.0 Rule was issued by this Court on 18.8.2003. No affidavit-in-reply has been filed by the respondent. This matter was listed for hearing on 6th July 2004. Thereafter the matter was adjourned to 8th July 2004, 13th July 2004, 14th July 2004 and lastly to 15th July 2004. Even today no reply has been filed. Therefore, the averments made in the petition are not controverted.

6.0 Mr. Soni for Mr. Hasurkar for the respondent submitted that the order or termination has been passed after issuing show-cause notice and based on the conviction order passed by the competent court against the petitioner. According to him the acquittal order was passed on the basis of joint pursis by both the sides and therefore the decision is not on merits of the matter. Mr.Soni has also submitted that the petitioenr has an alternative remedy by way of departmental appeal.

7.0 I have carefully perused the documents on record. From the record it is clear that by judgement and order dated 31st July 2003, passed in Criminal Appeal No.9/2003, the learned Additional Sessions Judge, Banaskantha has set aside the judgement and order of conviction passed by the learned Judicial Magistrate (First Class), in Criminal Case No.1440/1995. In view of this judgement, I am of the opinion that there is no conviction order against the petitioner. Therefore, the order of termination based on the aforesaid conviction order cannot be sustained. It is required to be noted that the order passed by the Sessions Court was not challenged in higher forum. Learned counsel for the respondent is unable to show any reason or authority that if the acquittal order is passed on the basis of joint pursis of compromise, it cannot be said that it is an

acquittal order in the eye of law. It is a well settled law that if the employee is convicted the authority could terminate his services; but ultimately if the conviction is reversed, then the termination order should go.

7.2 In any case, the dispute was purely a private dispute between brothers and complainant and when the conviction order is set aside at their instance, the respondent Board should not have taken a rigid stand. Admittedly there was no allegation of misappropriation of funds of the Board against the petitioner. There are also no allegations against the conduct of the petitioner by the Board. Therefore, the Board should not have taken the extreme step of terminating the services of the petitioner.

7.3 As regards the contention that the petitioner has an alternative remedy by way of departmental appeal, this point was not raised at the time of admission of the petition. Therefore, at this stage I do not think that this is a fit case to relegate the petitioner for alternative remedy after a period of one year. I am of the view that looking to the peculiar facts of the case, even on merits this is not a case where termination order should have been passed.Therefore, the contention that the petitioner has an alternative remedy cannot be accepted.

7.4 In the present case it appears that the respondent authority has proceeded in a great haste. The show-cause notice was issued on 21st July 2003 and only seven days time was given to the petitioner to reply to the same. The petitioner submitted his reply on 28th July 2004. The petitioner brought to the notice of the authority that the conviction order is likely to be set aside in view of the development took place in the matter. The authority was also aware that the appeal was kept for hearing on 31st July 2003. In spite of that on 30th July 2003 the impugned order of termination was passed. Moreover, on 21st July 2003, the day on which the show-cause notice was issued, Caveat applications were filed before this Court and Civil Courts at Palanpur and Deesa. From these facts it appears that the respondent authority has determined to terminate the services of the petitioner. This is further evident from the fact that even after the order of the learned Sessions Judge setting aside the conviction order, the order of termination was not revoked. Apart from that, since the authority was aware that the appeal was kept for hearing on 31st July 2003, they could have waited for the outcome of the appeal or at the most the petitioner

should have been placed under suspension. Even after admission of this petition the respondent authority could have revoked the termination order which is not done. Therefore, I am of the opinion that the impugned order is not passed bonafide and on this ground also the impugned order requires to be set aside.

8.0 In the result, the petition is allowed. The order of termination dated 30th July 2003 is quashed and set aside. The respondent shall reinstate the petitioner on his original post with continuity of service and shall compute and pay all other consequential benefits to the petitioner. The arrears due to the petitioner shall be paid within a period of three months from the date of receipt of writ of this Court. Rule is made absolute accordingly with no order as to costs.

9.0 From the facts narrated hereinabove, it is clear that the then Superintending Engineer has acted in great haste as a result of which the respondent Board has suffered loss. Therefore this is a fit case where the higher authority, either the Chairman or Managing Director or Secretary of the Board, should look into the matter and if ultimately comes to the conclusion that the action of the Superintending Engineer was not bonafide, then the amount of arrears in question should be recovered from the concerned officer.

[K.S. JHAVERI, J.]

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